ENCLOSURE B

Response to STAPPA/ALAPCO Recommendations On MACT/Title V Interface Issues (from December 11, 1998 Letter to John Seitz)

[General note: Any responses referring to part 70, or permit revision processes, are based on the present part 70 rule promulgated in 1992.]

A. MANAGEMENT OF CHANGE

A-1. Retrospective application of 112(g)

STAPPA/ALAPCO Recommendation: In cases where NSR violations are addressed for historical construction projects that pre-date the effective date of the Section 112(g) rule, 61 Fed. Reg. 68,384 (December 27, 1996), STAPPA and ALAPCO recommend that Section 112(g) MACT controls not be mandated by EPA.

EPA Response: The EPA agrees that, for historical construction projects which pre-date the effective date of the section 112(g) rule, where a source has violations for operating without valid NSR permits, the EPA will not mandate section 112(g) MACT controls on those historical construction projects.

A-2. Issuance of the permit before MACT compliance details are available

STAPPA/ALAPCO Recommendation: When the title V permit is issued prior to the compliance date of the MACT standard or prior to specific compliance details being available, STAPPA and ALAPCO suggest that the permit initially may include an identification of applicable requirements for the facility at the Subpart level, and that additional details may be added through minor permit modification procedures with public and EPA review occurring at permit renewal.

EPA Response: The EPA agrees that when a permit is issued prior to the MACT compliance date, one option is for the initial permit to describe MACT applicability at the Subpart level, and for all other compliance requirements (including compliance options and parameter ranges) of the MACT that apply below the Subpart level to be added at a later time. Because this more detailed information describes for the first time in the permit specifically how the source will comply with the standard, it is important to have EPA and public review and thus, it must be added as a significant permit modification.

Another option is for the initial permit to identify the MACT standards or requirements

that apply at the section or subsection level, including anticipated compliance options, along with the information identified in the Initial Notification required by the General Provisions, see 40 CFR Part 63, Subpart A, or by the applicable Subpart. For example, a permit for a source subject to 40 CFR Part 63, Subpart T would identify, in part, each solvent cleaning machine and the anticipated compliance option. [See 40 CFR § 63.468(a) and (b)]. Additional compliance information required in the Notice of Compliance Status (e.g., parameter values) would be added as a minor permit modification when the NCS is submitted. As clarified at the Dallas workshop, the current Part 70 regulations require that minor permit modifications have an EPA review (but no public review) at the time of the permit modification.

A-3. Changes in the selected compliance option

STAPPA/ALAPCO Recommendation: Where the permit does not initially contain a compliance option that the source wishes to use, STAPPA and ALAPCO recommend that EPA permit additional compliance options already allowed under the MACT standard to be added to the permit as a minor modification with public and EPA review occurring at renewal.

EPA Response: We agree that if a source wishes to add compliance options that are a part of the MACT standard, the compliance options usually can be added to the permit through the minor permit modification process. However, some compliance options, such as those with emissions averaging, would require a significant permit modification due to the amount of judgment involved. Again, the current Part 70 regulations require that minor permit modifications have an EPA review at the time of the permit modification.. As you know, a permit modification may be avoided if the initial permit includes compliance options as alternative operating scenarios under § 70.6(a)(9).

A-4. "Once-In-Always-In" and pollution prevention

STAPPA/ALAPCO Recommendation: STAPPA and ALAPCO recommend that EPA revise its current guidance to recognize that, where greater reductions are achieved through pollution prevention and those emission reductions are practically enforceable, the MACT-specific requirements should no longer apply.

EPA Response: A workgroup consisting of representatives from STAPPA/ALAPCO, OECA, OPPT, and OAQPS has been established to address this issue. Our staff continues to work on this issue with the workgroup. Once the workgroup has completed its efforts and has made a recommendation, a decision will be made by EPA and sent to STAPPA/ALAPCO.

B. LEVEL OF DETAIL FOR POINT SOURCES

B-1. Use of generic groups that do not identify specific emission units

STAPPA/ALAPCO Recommendation: STAPPA and ALAPCO recommend that EPA allow the identification of emission units by generic groups in permits for smaller MACT-affected emission units that are frequently added, removed or changed and for similar multiple control devices subject to the same monitoring, recordkeeping, reporting and testing requirements. This approach would allow emissions units subject to specific applicable requirements not to be specifically identified or listed in the permit. A contemporaneous on-site log could be used to identify specific units and to document changes to and from generic groups.

EPA Response: We interpret your suggestion to recommend that small units subject to MACT standards which are frequently added, removed or changed could be identified in an on-site log, rather than specifically identified in the permit. We further interpret your suggestion as recommending that control devices to which similar MACT requirements apply could be identified in a log, rather than specifically identified in the permit. Finally, we understand your suggestion for a log to be a voluntary mechanism to help the source keep track of units or control devices added to the facility without revising the permit.

As a general rule, the permit must identify not only the applicable requirements, but the specific emissions units to which those requirements apply, to assure compliance by specific units with specific applicable requirements. Linking of applicable requirements to emission units in the permit is important because it retains applicability decisions with the permitting authority instead of transferring these decisions to the source. It also clearly identifies the requirements that apply to each unit and eliminates any disputes as to whether a unit fits a generic group description. Therefore, we believe it is appropriate for the permit to identify specific units. As a practical matter, however, we believe that generic grouping could be appropriate in two situations: 1) where the applicable requirements apply generically; and 2) in certain circumstances where many small units make identification of individual units infeasible. In addition, we are currently involved in several pilot projects that may identify other situations in which generic grouping of emission units may be appropriate.

The first situation where generic grouping may be appropriate is where applicable requirements apply generically to a facility, rather than to an identified class of units. The EPA's White Paper I allowed for the use of generic groups to identify units subject to requirements that apply in the same way to all units at a facility, such as facility-wide opacity limits of the implementation plan (SIP). See White Paper I at 24. An example is a regulation that states "no person shall cause emissions in excess of 20% opacity." Since the requirements do not apply to specific types of units, it is not necessary for the permit to identify specific units subject to the requirement, and hence, generic grouping may be appropriate. [See § II.4 of White Paper I.]

The second situation where generic grouping may be appropriate is where the sheer numbers of units make identification of individual units infeasible, and where the applicable requirement is open to such an approach. Examples where this could be the case include pumps, valves, or flanges covered by leak detection and repair (LDAR) requirements, and manhole covers or drains covered by wastewater work practice standards. In these situations, instead of identifying specific units, the permit could place affected units into a group in which all units are subject to the same applicable requirement, provided that the permit clearly defines the type of unit in each group and the applicability criteria. If required by the MACT standard, the owner or operator must develop a mechanism to identify which individual units belong to which group, and the permit should reflect this obligation. For example, 40 CFR Part 63, Subpart H requires the source to maintain lists of equipment subject to different requirements of the Subpart, but provides that an on-site recordkeeping system may satisfy this requirement. [See 40 CFR § 63.181(b).]

As to your recommendation of generic grouping for control devices subject to similar requirements, however, we cannot agree. We think it is important for the permit to clearly link emission units to control devices and, in turn, to applicable requirements, so that it is clear which control device is being used to meet which standard for which units. We do not yet understand how this can be done categorically for control devices. We are now working on pilot projects that will allow us to see if certain control devices can be advance-approved and generically grouped. We expect that the size of emission units and the nature of control devices will be considerations.

B-2. Incorporation of multiple compliance options into Title V permits

STAPPA/ALAPCO Recommendation: STAPPA and ALAPCO recommend that EPA recognize that various compliance options authorized by MACT standards can be placed directly in the permit by referencing the MACT provisions, without identifying them as Alternative Operating Scenarios (AOS). The MACT standard provisions (e.g. periodic reports, Notice of Compliance Status) would provide recordkeeping and notification of changes to compliance options. In addition, STAPPA and ALAPCO believe that once the compliance date is past, the source is obligated to maintain continual compliance even if the compliance option changes.

EPA Response: We read your suggestion to recommend that different compliance options of a MACT standard may be referenced in the permit, but not identified as an AOS.

As to your suggestion not to identify compliance options as an AOS, EPA believes that the appropriate way to define different compliance options is as one or more AOS. This is important because to assure compliance with a MACT standard by specific emissions units, the permit must clearly specify which compliance options a source may utilize, using the on-site log required by 40 CFR § 70.6(a)(9) to indicate which compliance option is in effect at a given time. Part 70's AOS provisions supply the appropriate mechanism to ensure that the permit reflects applicability determinations made by the permitting authority for specific emission units, and that

inspectors will have historical records and current information on which compliance option the source is following. The EPA is working on ways to streamline the addition of compliance options into the permit.

When the source changes MACT compliance options, part 63 will require a notification (40 CFR § 63.9(j)) in those cases where the newly instituted option was not already incorporated into the permit. That is, § 63.9(j) triggers a notification only in the instance where "information not previously provided" becomes available. A notification would not be necessary if the permit already included all necessary provisions for employing alternate MACT compliance options.

B-3. Level of Detail Needed to Incorporate General Provisions into Permits

STAPPA/ALAPCO Recommendation: With regard to the General Provisions (40 CFR Part 63, Subpart A), STAPPA and ALAPCO recommend that it be sufficient for the permit to specify that the facility is subject to Subpart A as specified in Table 1 of the applicable MACT standard. While state and local agencies may also choose to include summary conditions for key General Provisions requirements, the reference to Subpart A and the MACT-specific Table 1 should be sufficient to meet Part 70 requirements.

EPA Response: Generally, the EPA agrees with this recommendation, including the recommendation that it is sufficient for the permit to reference the appropriate table in the MACT rule (not always Table 1). In cases where the requirements of the General Provisions are not clear enough to cross-reference, however, then the permit may need to contain additional clarification as to how the General Provisions apply to the facility.

B-4. Level of Detail Needed to Incorporate MACT Standards into Permits

STAPPA/ALAPCO Recommendation: STAPPA and ALAPCO recommend that state and local agencies be allowed to specify only that the source is subject to the relevant Subpart, or to include additional detail as circumstances dictate. For example, under STAPPA and ALAPCO's recommended approach, standards such as the MACT standard for Industrial Process Cooling Towers, 40 CFR Part 63, Subpart Q, may be appropriately addressed at the Subpart level. Generally, state and local agencies favor including a summary of conditions of the applicable requirement at the section level or lower, along with a reference statement or, alternatively, including a summary of conditions at the section level, along with specification of the applicable Subpart. However, since there may be times when only specifying the Subpart is sufficient, that should be the minimum requirement.

EPA Response: We interpret your suggestion to recommend that EPA endorse a reference to the Subpart level as generally acceptable except where further specificity is required by the permitting authority. We also interpret your suggestion to apply at any stage of the permit, not just prior to the compliance date of a MACT standard.

The permit needs to cite to whatever level is necessary to identify the applicable requirements that apply to each emissions unit or group of emission units (if generic grouping is used), and to identify how those units will comply with the requirements. As EPA indicated in White Paper II, the permit must at least specify the applicable emission limit or standard, and the emissions unit to which the limit or standard applies. The White Paper also stated that the permit may use referencing where it is specific enough to define how the applicable requirement applies and where using this approach assures compliance with all applicable requirements. We interpret this to require the permit to identify (or reference) the monitoring, recordkeeping and reporting requirements. Accordingly, we cannot agree with your recommendation that a reference to Subpart level is acceptable at the discretion of the permitting authority.

In the example of the Industrial Process Cooling Towers MACT (Subpart Q), we recommend that the permit identify the standard to be met (i.e., a ban on chromium-based water treatment chemicals), and the unit(s) subject to the standard (i.e., industrial process cooling towers). The permit should also reference the notification requirements of 40 CFR § 63.405, the recordkeeping and reporting requirements of 40 CFR § 63.406, and the applicable General Provisions in Table 1 of Subpart Q.

C. LEVEL OF DETAIL FOR NON-POINT SOURCES

C-1. Identification of wastewater streams subject to MACT in the Title V permit

STAPPA/ALAPCO Recommendation: STAPPA and ALAPCO recommend that each wastewater stream need not be identified individually in the permit. The permit should contain 1) a description of the criteria for determining a wastewater stream's status, or a reference to the relevant MACT provisions that establish those criteria, and 2) the applicable requirements for Group 1 and Group 2 streams. The identification of the wastewater streams affected by MACT (i.e., Group 1 and Group 2 streams) and the applicable group status will be provided in the implementation plan or periodic reports as required by the MACT.

EPA Response: We understand your recommendation to mean that the permit would define wastewater streams as a class (i.e., one class for Group 1, another class Group 2), and would not identify individual wastewater streams within each class. As clarified in Dallas, we interpret your recommendation to apply not only to how the permit identifies wastewater streams existing at the time of permit issuance, but also to how the permit might provide for the addition of new streams without a permit revision.

We do not agree with the idea that individual streams need not be identified. The permit must include a listing of all wastewater streams that designates their status as Group 1 or Group 2, because each Group has different applicable requirements, including monitoring, reporting, recordkeeping and testing requirements. The linkage between individual streams and their Group 1/Group 2 status may be set up as an Alternative Operating Scenario, which would allow individual streams to change status during the permit term, provided that the new status is

identified in the on-site log required by part 70. Under this approach, the permit would need to contain or reference the procedures by which the source determines Group 1 or Group 2 status. Also, the permit must be revised in order to identify new wastewater streams. Note that we are experimenting with advance approval of wastewater streams under the MACT standard for pharmaceutical production, see 63 Fed. Reg. 50, 280 (September 21, 1998) (to be codified at 40 CFR Part 63, Subpart GGG), and may have additional guidance on this topic in the future.

Finally, the permit needs to require the source to provide notification for any change in Group status as required in MACT regulations. For example, Subpart G requires a source to report in the next periodic report any Group 2 emission point that becomes a Group 1 emission point, and include a schedule of compliance as required by § 63.100 of Subpart F. [See 40 CFR § 63.152(c)(4)(iii).]

C-2. Specification of requirements for fugitive and wastewater sources

STAPPA/ALAPCO Recommendation: For fugitive emission requirements, STAPPA and ALAPCO recommend that detail at the Subpart level is generally sufficient (e.g., Subpart H). For wastewater requirements, STAPPA and ALAPCO recommend that the permit contain detail at the section level. If the MACT does not require the source to keep records of the current operating options, the permit could specify such a recordkeeping requirement. Finally, the state and local agencies believe Part 70 does not require the source to notify permitting authorities when they switch compliance options.

EPA Response: We understand your recommendation to apply to equipment leak requirements ("fugitive emission requirements") and wastewater emission points ("wastewater sources.")

As we stated in the response to recommendation B-4, we do not believe that Subpart citation by itself is appropriate. For equipment leak requirements (e.g., Subpart H of part 63, Subpart VV of part 60), different standards, recordkeeping and reporting requirements apply to different types of equipment subject to the rule. For example, one standard applies to pumps in light liquid service, and another standard applies to pumps in heavy liquid service. For this reason, we believe that the applicable requirements of Subpart H (and other similar rules) should be cited at appropriate levels below the Subpart, consistent with the need discussed above to clearly designate the specific applicable requirements for different and specific emission units.

For wastewater streams, citation to the section level (or lower) level of citation is needed to clearly convey the emission limitations of the rules with no ambiguity . We agree that part 70 does not require sources to notify permitting authorities when they switch compliance options that are part of an AOS. However, as noted in the response to recommendation B-2, the MACT general provisions do require reporting and notification when switching to a new compliance option (unless the permit includes the information as an AOS), and these requirements must be met. As we have noted elsewhere, permit revisions can be minimized by including all anticipated options in the permit as AOS's.

C-3. Specification of operating parameters in the permit

STAPPA/ALAPCO Recommendation: STAPPA and ALAPCO recommend that either the actual value for operating parameters or the process to develop those values be considered sufficient to meet Title V permit requirements. Where operating parameter values are identified in the permit, STAPPA and ALAPCO recommend that the minor permit modification process be used to add or change operating parameter values. Public and EPA review would occur at permit renewal.

EPA Response: We interpret your suggestion as applying to the parameter ranges or maximum/minimum parameter values (from here on we will refer to them as "parameter ranges"). These parameter ranges are required by many MACT standards. However, we interpret your suggestion as not limited solely to MACT standards; for example, it could apply to NSPS standards that require parameter ranges. We further interpret your suggestion as allowing a permit authority to put in the permit either a process for determining the parameter range, or the parameter range itself. We understand the suggestion to put just the process in the permit to mean that the range itself would not be in the initial permit, and also that the permit would not be revised when a new parameter range is set using the process. In addition, you are recommending that if the actual parameter range is identified in the permit, and then a new parameter range is established, the minor permit modification could be used to incorporate the new parameter range.

We believe that the parameter range must be included in the permit. The parameter range is one of the applicable requirements comprising MACT standards, and is often the means for determining compliance with the emission standard. Including the parameter range as a permit term ensures that the source will be required to promptly report deviations from the range [40 CFR § 70.6(a)(3)(iii)(B)], to submit semiannual reports of such deviations and parameter monitoring [40 CFR § 70.6(a)(3)(iii)(A)], and to certify compliance with the range [40 CFR § 70.6(c)(5)].

We agree that for incorporating a new parameter range into a permit, a minor permit modification could be used. We are also investigating whether this could be done as an administrative change to the permit. This is because we believe that most changes to a parameter range will not be a significant change to monitoring, recordkeeping, or reporting [40 CFR §70.7(e)(2)(i)(A)(*2*)]. Note that in accordance with 40 CFR § 70.7(e)(2)(i)(A), a significant change to monitoring, recordkeeping, or reporting would require the significant modification process. Again, the current Part 70 regulations require that minor permit modifications have an EPA review at the time of the permit modification. [40 CFR § 70.7(e)(iii) & (iv)].

In situations where parameter ranges are expected to change so often that a minor permit modification for each change would be impractical, we suggest that you consider the group processing provisions for minor modifications. See 40 CFR § 70.7(e)(3). These provisions are available for changes that are collectively below the thresholds identified in 40 CFR § 70.7(e)(3)(i)(B). We expect that many changes to parameter ranges would be small enough to fit below these thresholds. If so, group processing allows the permitting authority to group up to

a quarter's worth of changes, and then to take up to 180 days to act on the group of permit revisions.

This guidance does not alter the flexibility provided under the "Change Management Strategy" set forth in the preamble to the MACT standard for Pharmaceutical Production, or in future Subparts with similar flexibility. In addition, this guidance does not alter the provisions of the compliance assurance monitoring (CAM) rule, which specifically authorize the permit to include procedures for establishing parameter indicator ranges, designated conditions or excursion triggers, rather the particular ranges, conditions or triggers. See 40 CFR 64.4(a)(2) and (c)(2).

C-4. Incorporation of startup, shutdown, and malfunction plans, operating and maintenance plans, and periodic reports in Title V permits

STAPPA/ALAPCO Recommendation: STAPPA and ALAPCO recommend that EPA use the same approach for operation and maintenance (O&M) plans and periodic reports that is contained in a memorandum from John Seitz dated January 17, 1996 addressing startup, shutdown and malfunction (SSM) plans. The associations further recommend that changes in O&M plans not trigger a permit modification procedure.

EPA Response: We understand your recommendation to be that the approach used in the Seitz memorandum [which applies to startup, shutdown and malfunction (SSM) plans] should also apply to O&M plans and to periodic reports. We further understand your recommendation to be that EPA should not require a permit revision when changes are made to an operation and maintenance plan.

To put your recommendation in context, we need to clarify that the General Provisions of part 63 require any SSM plan to be incorporated by reference into the title V permit [§63.6(e)(3)]. In addition, Subpart N requires an O&M plan to be incorporated by reference into the permit [§63.342(f)(3)(i)]. As far as we are presently aware, Part 63 does not require any periodic reports or any other O&M plans to be incorporated by reference into the permit. Since these periodic reports and O&M plans (except Subpart N) are not required to be incorporated by reference into title V permits, these documents need not be incorporated by reference, nor must their content be included as permit terms, in order to assure compliance with the relevant part 63 applicable requirements. Consequently, we agree that a permit revision would not be required when changes are made to these reports or O&M plans. Of course, permits must still require that sources develop, implement or submit, retain, and revise as necessary these plans or reports, consistent with the applicable MACT standard.

That still leaves the SSM plans required under the General Provisions and the O&M plan required under Subpart N. We recognize that requiring the incorporation of these plans by reference into the permit renders the content of the plans enforceable permit conditions and, accordingly, means that changes to plans could result in permit revisions. We believe that this outcome can be avoided, however, by a general reference in the permit to the SSM plan. The

permit would still incorporate the plan by reference, but the reference would not cite the date or specific content of any particular SSM plan. This approach would allow the plan to change without triggering a permit revision. To implement this approach, the permit would state that the SSM plan required under § 63.6(e)(3), and any revision to that plan, is incorporated by reference and is enforceable as a term and condition of the permit. The permit would further state that revisions to the SSM plan are automatically incorporated by reference and do not require a permit revision.

Although incorporation by reference of a document required by an applicable requirement would normally require reference to the document as it exists on a specific date, we believe the approach outlined here for SSM plans is appropriate because it is more consistent with the intent of the General Provisions, which were promulgated subsequent to part 70 and which contemplate that the source will be able to make changes to the SSM plan without the prior approval of the EPA or the permitting authority. See, e.g., §§ 63.6(e)(3)(v) and (e)(3)(vii). For example, any time the SSM plan fails to address or inadequately addresses an event that meets the characteristics of a malfunction, the source must revise the SSM plan to include procedures for operating and maintaining the source during similar malfunction events, and a program of correction actions for similar malfunctions of process or air pollution control equipment. See § 63.6(e)(3)(viii). In addition, compliance with an SSM plan does not relieve a facility from the responsibility to comply with good air pollution control practices as required by § 63.6(e)(1).

Finally, the permit must contain language that reiterates an enforceable obligation for the source to develop, implement, retain, and revise as necessary the SSM plan. The permit must also contain a reference to the applicable rule requirement that requires the plan. Permit authorities also have the authority to request that the SSM plan be submitted to them. They also can require essential parts of the plan, such as the definition of startup, shutdown and malfunction events, to be included in a permit application, pursuant to § 70.5(c)(5), which states that applications must include all information needed to determine applicability of requirements.

Of course, States retain the authority to incorporate specifically identified SSM plans by reference into title V permits, if a permitting authority believes it is important to review certain changes to particular SSM plans pursuant to its approved part 70 program. Note that the requirement to incorporate the SSM plan by reference is under review by EPA as part of the settlement of the litigation on the Part 63 General Provisions and may be the subject of future rulemaking.